In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 19740 of 2004
Date of Decision: 07.05.2007

Manjit Singh

…Petitioner

Versus

State of Punjab and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. G.S. Chahal, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for respondent No. 1.

Mr. S.P. Garg, Advoate,
for respondent No. 2.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of mandamus directing the respondents to grant the benefit of the period of military service rendered by the petitioner during the National emergency towards increments of pay, seniority etc. with consequential reliefs in terms of Rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 (for brevity, 'the Rules').

Brief facts of the case are that the petitioner was enrolled in the Indian Army on 13.8.1960 as a Sepoy and remained in army service up to 28.11.1968 when he was discharged on compassionate grounds. On 12.4.1971, the petitioner joined as Driver in the Pepsu Road Transport Corporation-respondent No. 2. and retired on 31.8.2000 on attaining the age of superannuation. 28.3.1988 and 18.1.1993, the petitioner submitted representations for grant of benefit of military service rendered by him in pursuance to the Punjab Government National Emergency (Concession) Rules, 1965 (for brevity, ' the Emergency Rules 1965'), for reckoning the service rendered by him from 26.10.1962 to 28.11.1968 (P-1 and P-2 respectively). However, no decision is stated to have been taken on the aforementioned representations.

In the written statement filed on behalf of respondent No. 2, the stand taken is that the claim of the petitioner is highly belated as he had put forth his claim for the first time on 28.3.1988. It has been asserted that the Emergency Rules 1965 were never adopted by the respondent Corporation for granting benefits to its employees and, thus, the respondent Corporation is not bound by any decision of

the Punjab Government. On these grounds the claim of the petitioner is sought to be contested.

We have thoughtfully considered the submissions made by the learned counsel for the parties and are of the view that the writ petition is devoid of any merit. The State of Punjab framed the Emergency Rules 1965 whereby a person who has been enrolled or commissioned in any of the three wings of the Indian Armed Forces during the period of proclamation of emergency i.e. from 26.10.1962 to 10.1.1968, was entitled to counting of period of military service for the purposes of increments, seniority and promotion on a civil post after having been discharged from the Armed Forces. The period of military service in respect of second emergency could also be counted for the service benefit on a civil post in the State of Punjab, as has been laid down by a Full Bench of this Court in **Jang Singh v. State of Punjab, 1997 (5) SLR 308**. The expression 'military service', as contained in Rule 2 of the Emergency Rules 1965, reads as under:-

> "2. Definition - For the purpose of these rules the expression 'Military Service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution on 26th October 1962 or such other service as may hereinafter be

declared as military service for the purpose of these rules. Any period of military training followed by military service shall also be reckoned as Military Service."

A perusal of the aforementioned definition of military service would show that only those members of the armed forces were to be entitled to the benefits of service rendered in armed forces who had been enrolled or commissioned during the period of operation of proclamation of emergency made by the President under Article 352 of the Constitution. Hon'ble the Supreme Court in the case of **Dhan Singh v. State of Haryana, 1991(1) SLR 200**, has held that those who preferred the army service as a career, would not be entitled to the benefit of service rendered in armed forces as compared to those who have been enrolled and commissioned during the period of emergency. In other words, those who had joined the Indian Armed Forces on the call of the Nation on account of emergency, were alone held entitled to those benefits. A Full Bench of this Court in the case of Jang Singh (supra) after considering the Division Bench judgment in the case of **Narinder Nath Sharma v. State of Punjab, 1993 (2) RSJ 173**, has followed the aforementioned principle as has been laid down in Dhan Singh's case (supra).

When the facts of the present case are examined in the light of the law laid down by the Hon'ble Supreme Court in Dhan Singh's case (supra), it becomes evident that the petitioner had not joined the Indian Army after the proclamation of emergency. It is the case of the petitioner that he was enrolled in the Indian Army on

13.8.1960 whereas the first emergency was in operation from 26.10.1962 to 10.1.1968. He was discharged on 28.11.1968. Pproclamation of emergency for the second time was issued on 3.12.1971, which remained in force till 3.7.1977. According to the judgment of the Supreme Court in Dhan Singh's case, the petitioner would not be entitled to the benefit of military service rendered during the emergency because he had not joined the armed force on the call of the Nation to combat emergent situation. It appears that the petitioner had joined the Indian Army by choosing it as a career. Therefore, no benefit of military service rendered by the petitioner could be given to him for counting the same for increments and seniority etc. The matter is covered against the petitioner by the judgment of the Hon'ble Supreme Court in Dhan Singh's case (supra).

For the reasons aforementioned, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 7, 2007
Pkapoor